Testimony of Andy Warlick, Chairman & CEO Parkdale Mills

House Committee on Ways and Means Subcommittee on Trade Roundtable on U.S. De Minimis Policy

December 13, 2023

Ranking Member Blumenauer and distinguished Committee members, thank you for the opportunity to testify on this subject that is so important to our nation, to the U.S. textile industry, and to me personally and the men and women who work for Parkdale Mills.

My name is Anderson Warlick, and I am chairman and CEO of Parkdale Mills, which is headquartered in Gastonia, North Carolina. We are one of the world's leading manufacturers of spun yarns, with significant operations in the United States and the Western Hemisphere.

I am grateful for Ranking Member Blumenauer's leadership and to all of you here today. De minimis is severely impacting my company, U.S. textile and apparel manufacturers, brands and retailers, and our Free Trade Agreements (FTAs). I can't emphasize enough the urgency to close the de minimis loophole.

Parkdale History

As an industry leader for over 100 years, Parkdale produces 900 million pounds of yarns annually, enough yarn to manufacture 1.56 billion T-shirts every year. Our company is the largest domestic consumer of U.S. cotton, using 755 million pounds of U.S.-grown cotton per year, accounting for approximately 60 percent of total U.S. cotton consumption. Parkdale currently has 21 operations in the U.S. and Latin America. In the United States, Parkdale operates 15 locations in seven different states. Ninety-nine percent of our yarn exports go to Western Hemisphere countries, with 78 percent of our exports going to the Northern Triangle countries. Those exports support 3,500 jobs in the U.S. and have a substantial impact on employment in the region. We estimate that for every single yarn job created, there are 20 more direct and indirect jobs created throughout the hemisphere's supply chain. This demonstrates the incredibly strong and valuable nature of the textile and apparel co-production chain between the United States and the Western Hemisphere.

Parkdale also worked hand in hand with our Central American customers to retool production lines, literally overnight at the height of the COVID crisis, to manufacture desperately needed personal protective equipment (PPE) for the U.S. government. Since the onset of the COVID-19 pandemic, Parkdale has become one of the federal government's largest domestic suppliers of PPE products, producing over 450 million testing swabs, more than 100 million face masks, and over 60 million level-1 isolation gowns. Parkdale is a proud supplier of a broad spectrum of yarns to the U.S. military.

Over nearly a decade, our company has made significant capital investments totaling \$500 million, creating more than 1,500 jobs. We believe in constantly investing in our operations and people and have a relentless commitment to providing innovative and cost-effective solutions to our customers.

The U.S. textile sector is an extremely diverse, technically advanced, and highly capital-intensive industry that involves a multi-stage production chain. This domestic production chain is comprised of suppliers in

the cotton, wool, and man-made fiber sectors; yarn and fabric manufacturers; dyers, printers, and finishers; and our customers in the U.S. apparel, textile home furnishings, automotive, aerospace, construction materials, energy exploration, medical, military, and other end-use industries.

The domestic textile industry is an important component of the U.S. economy with production found in every region of the country and responsible for nearly \$66 billion in total output in 2022. The industry provides much-needed jobs in rural areas and has functioned as a springboard for workers out of poverty into good-paying jobs for generations. The breadth, scope and manufacturing capabilities of the industry are unparalleled—the industry has invested \$21 billion over the past 10 years in the latest innovations on sustainability and production capabilities. This focus on innovation enables the industry to create hundreds of thousands of products including apparel, industrial textiles, military uniforms and other defense applications.

The De Minimis Loophole

Despite having spent my entire 44-year career in this sector—a career that has seen massive industry upheavals due to the adoption of NAFTA, the granting of PNTR to China, the accession of China to the WTO, and the incredibly difficult economic downturn of the Great Recession—our industry and my company have never seen the level of economic difficulty that we are currently facing. Nearly every textile facility in the country is now running at significantly reduced capacity, and many production lines are completely idle. As an industry, we have seen no fewer than eight significant plants cease operations and shut down in the past 12 weeks, leaving 1,000 working men and women without a job right before the holidays.

These closures are just the proverbial canary in the coal mine. Unless something is done immediately to address this dire situation, we will see these American manufacturing closures accelerate in the weeks and months ahead. While there are several factors that have contributed to this situation, I believe that as an industry we would be able to weather this economic storm if not for a little known, pernicious loophole that has been exploited at an extraordinary scale in recent years by predatory companies based in and sourcing from China: the de minimis loophole.

De minimis was originally designed in the 1930s to ease the burden on U.S. Customs agents of monitoring unpaid taxes on trinkets American travelers transported when returning from abroad. As the targets were American tourists and the cost required to monitor travelers was more than the minimal tariffs collected, this trade was considered both low-risk and "de minimis"—meaning smallest, least, trifling.

Over years of questionable agency rulemaking, the de minimis exemption was first extended to catalogue orders fulfilled by a U.S. company's Canadian warehouse, then broadly to all e-commerce regardless of country of origin. Rulemaking also redefined that the importer of record—the accountable party for the shipment—was no longer the shipper who originates the package (and has visibility as to its origin and contents), but the end consumer who placed the order. This created a system where there are no duties or fees, essentially no paperwork, and virtually no scrutiny or accountability for de minimis imports.

De minimis shipments totaled 150 million total packages in FY 2016, a number that exploded to over one billion individual packages in FY 2023 and is expected to double in just a few short years. It is estimated that half of the de minimis packages are textile and apparel packages coming in through a legalized back

door and facilitating unethical and illegal products to our doorstep—undermining all attempts to onshore and nearshore critical supply chains like textiles and apparel.

This trade is now no longer minimal—it is costing the U.S. Treasury \$10s of billions in revenue annually—and it's costing domestic U.S. taxpaying companies everything.

Some say that de minimis is not a loophole at all, but that Congress intended the system that we see now. While de minimis may not be a "tax loophole" since by definition de minimis gives Customs and Border Protection (CBP) the authority to waive tariffs, as it currently exists, it is a loophole in practice that has created a host of problems that Congress never intended and CBP cannot enforce:

- <u>Fentanyl Loophole</u>: CBP reports that in the de minimis environment it is extremely challenging to target fentanyl and illicit drug shipments which are growing through this black-market channel. The reasons for illicit drugs gravitating toward de minimis are simple: there is an extremely low risk of getting caught and, even if caught, there is virtually zero risk of being held accountable as the shipper in many cases is essentially anonymous.
- <u>Health and Safety Loophole</u>: Products entering the U.S. through formal entry, meaning in a bonded shipment through a port of entry, are subject to high standards set by the FDA, CPSC, EPA, and other federal agencies to keep dangerous, faulty, and subpar products from American consumers. Products entering via de minimis avoid even cursory screening for compliance with U.S. laws, leading to serious problems like EV batteries that catch fire, toys that contain lead paint, PPE and helmets that fail to provide protection, and innumerable other hazards. Products without standards are cheaper to produce and yield a higher profit margin, and de minimis provides them VIP express entry to the U.S.
- <u>IPR Loophole</u>: De minimis is a superhighway for high-end counterfeit consumer products and putting our retailers out of business.

The result of this loophole is an overwhelming flood of illegal, illicit, and unethical products entering the U.S. with an express pass—three million de minimis shipments entering the U.S. each day, largely uninspected and tariff free. By definition, a "de minimis" package is deemed to represent an amount of trade that is too minimal for CBP to review or collect any tariffs on, including China 301 penalties. However, with the current level of and growth projections for e-commerce in the de minimis environment this is clearly no longer "minimal trade." Due to the lack of even cursory transparency and insight into this trade, it is impossible for CBP to enforce trade laws like our FTAs, and China and others are rewarded with a de facto FTA with no strings attached.

As a result, under the U.S. de minimis tariff waiver system, China and every other country in the world effectively has FTA access to the U.S. for products under \$800. Further, the \$800 cap is on the retail value of the shipment in the home market, not the price actually paid, which makes it easy to undervalue goods. This access is a pure gift and comes without any of the hallmarks of a negotiated free trade agreement, including no rule-of-origin requirements, reciprocal market access, or labor or environmental standards. To put this another way, under our de minimis program, the U.S. provides duty-free, direct-to-consumer FTA access <u>for all Chinese products</u> that are priced under \$800. China does not offer other countries the same generous program, maintaining its own de minimis level at a mere \$7USD.

This fundamentally undermines the promises we have made to our trusted FTA and preference partners in the Western Hemisphere. In exchange for duty-free access to our lucrative consumer market, these

partners had to first agree to high labor and environmental standards and other integral commitments to the rule of law, market economics, and fair trade. Our trade partners see these commitments as fair tradeoffs. Our de minimis waiver system, however, blows a hole straight through the reciprocal commitments at the heart of our FTA structure: Right now, Chinese companies enjoy virtually unlimited U.S. market access with no standards, commitments, or reciprocity as long as their business model ships products directly to consumers through the mail instead of in a cargo container.

This exponential growth in de minimis imports has allowed mass distributors, such as Shein and Temu—which are estimated to account for 30 percent of de minimis shipments—as well as Amazon, to facilitate millions of direct duty-free, virtually uninspected de minimis shipments each day.

Ask yourself a simple question: If I am an apparel or other consumer product company, why would I bother with investing in domestic retail stores, warehouses, and logistics operations; paying U.S. wages to a significant domestic workforce; and seeking out regional supply chains that offer duty-free market access through an FTA, when I can simply centralize all of my production in the lowest-cost, lowest-standard regions of the world and convert my operations into a duty-free direct-to-consumer model? How else will any U.S. company be expected to compete against this irrational and exploitative de minimis system? U.S. trade policy is meant to incentivize high standards and fair trade; de minimis undermines those values and only incentivizes the opposite.

Closing the Loophole

For all of these reasons, it is imperative that Congress act with all urgency to close the de minimis loophole as soon as possible. The impacts we are seeing and feeling here in the U.S. and across the industry throughout this hemisphere are only the beginning of a more massive calamity that will shortly take place once de minimis trade explodes further in the next few years. At that point, it may be too late to undo the damage to our manufacturing base and critical supply chains. We are also asking the administration to use all its current authorities under the statute to close this damaging loophole, but I want to amplify the need for congressional action.

I want to take this opportunity to address head on perhaps the two biggest questions I hear with regard to ending the de minimis loophole: First, can U.S. Customs and Border Protection adequately conduct enforcement if de minimis trade shifts from the mail and express shipping to more traditional entries? And next, how will ending de minimis for e-commerce impact prices for American consumers?

Can U.S. Customs and Border Protection adequately handle a shift in trade?

To begin, it is important to note that CBP is not even remotely equipped to handle enforcement of de minimis trade as it now exists. CBP plainly admits that it does not have the necessary data to do its job for de minimis shipments. In June 2023, CBP noted that "The overwhelming volume of small packages and lack of actionable data limit CBP's ability to identify and interdict high-risk shipments that may contain narcotics, merchandise that poses a risk to public safety, counterfeits, or other contraband." The agency further reported that for the over 685 million de minimis shipments it cleared in FY 2022, it had "insufficient data to properly determine risk." 1

More recently at a CBP Trade Advisory Committee meeting this past September, Troy A. Miller, CBP's senior official performing the duties of the commissioner, told members of CBP's Commercial Customs

¹ https://www.cbp.gov/sites/default/files/assets/documents/2023-Jun/NGFE-C~1.PDF

Operations Advisory Committee that "Due to e-commerce, the volume of [de minimis] shipments has skyrocketed...." Mr. Miller reported that CBP was tracking to exceed a billion shipments for the first time ever, which makes "screening these shipments and ferreting out contraband incredibly challenging." ²

As a practical matter, since CBP is unable to adequately enforce the trade that is currently entering via de minimis, we should therefore not worry about a drop in enforcement once de minimis ends.

To the contrary, closing the de minimis loophole would actually help CBP because we would expect to see much of the unmanageable volume of anonymous trade from the de minimis environment shift to the formal entry environment and be shipped through normal ports of entry on freight as opposed to one billion small international mail packages. Trade entering the U.S. at a port of entry is required to have a licensed broker and bond, in addition to reasonable paperwork detailing products, value, HTS number, tariffs owed, the identity of both the shipper and receiver, and other vital information required for effective enforcement and accountability. This trade is manageable—three million individual packages arriving daily without any of these requirements is not.

It is also worth noting that the U.S. is virtually alone in the world when it comes to sitting idly by while we are targeted by China's predation via de minimis. Noting that de minimis "is heavily exploited by fraudsters," the EU is currently considering a proposal to completely end de minimis treatment for e-commerce—adjusting its de minimis threshold from €150 down to €0. In making this proposal, the European Commission reported that up to 65 percent of all de minimis packages received in the bloc were purposely undervalued by shippers in order to qualify for duty-free benefits.³ Further, since 2021, all shipments into the EU have been required to make a formal customs declaration and remit Value Added Tax.⁴ Canada requires online retailers to list the country of origin for products and collects proper duties when foreign e-commerce enters the country. In Australia, overseas suppliers including online e-commerce platforms that sell over \$75,000 AUD (~\$50,000 USD) a year into that market are required to register and remit Goods and Services Tax of 10% of the landed value. Formal import clearance is also required in Australia. We should take note of and seek to replicate these reasonable actions.

Finally, it should be noted that CBP has a fully automated computer-based tariff collection system. Consequently, the task of actually collecting the duties on each of these shipments is no more complicated, burdensome, or costly than those associated with all other formal entries.

How will ending de minimis impact prices for consumers?

Contrary to much fearmongering by Chinese e-retailers and their allies, ending de minimis for e-commerce will not kill the internet or undermine e-commerce as a sales platform. We can see in the rest of the world where countries have put their citizens and the rule of law first and closed off de minimis that e-commerce still remains a viable and profitable retail option. Some might argue that while this may be true, consumers are going to be hit with higher costs as a result of tariffs being applied to online orders of fast fashion and other items.

² https://www.cbp.gov/newsroom/spotlights/cbp-trade-advisory-committee-convenes-fiscal-year-end-public-meeting

³ https://taxation-customs.ec.europa.eu/customs-4/eu-customs-reform_en

⁴ https://taxation-customs.ec.europa.eu/customs-4/customs-procedures-import-and-export-0/customs-procedures/customs-formalities-low-value-consignments_en

For an analogue, we can review what impacts the China 301 penalty tariffs had on the price of Chinese goods since going into effect. The U.S. International Trade Commission (ITC) studied the effect of 301 tariffs on import prices of apparel and other consumer products and found either no or minimal increases for importers. Testimony suggested that these actions boosted domestic manufacturing "without substantially increasing prices for final consumers." China was even found to have dropped their pre-tariff prices on apparel from 2016 to 2021. In addition, any concerns that closing de minimis will impact inflation are unwarranted as the ITC notes the favorable impact Section 301 penalties had boosting domestic production and reducing dependence on China. Closing de minimis creates significant opportunities for onshoring and nearshoring, helping to stabilize critical manufacturing sectors.⁵

To better understand the economics at play for U.S. consumers, consider the following example. As currently administered in the U.S., a product's tariff is not applied to its U.S. retail price but to its "first sale" price, similar to a product's wholesale cost in the country where it originates and before any profits from brokers or middlemen. For a pair of jeans from China, the pre-duty unit cost in the U.S. is an astonishingly low \$4.71 as of 2023. If we apply the duty rate for jeans from China (16.6 percent regular duty and 7.5 percent China 301 penalty duty), the duty owed is \$1.14. This is a negligible sum that does not significantly impact consumer buying power, and this principal holds true for nearly all consumer products exploiting de minimis. Further, it is also possible as has been observed in the Section 301 tariff context, that U.S. consumers will never even be impacted by the tariff as a Chinese manufacturer lowers its pricing to offset the tariff and/or the retailer absorbs it noting the high markup they enjoy.

We might ask why should an order via e-commerce receive different tax treatment from the same order conducted at traditional retail? In a way, this issue is not dissimilar to the debate in Congress several years ago regarding whether state sales taxes ought to be applied to an e-commerce purchase. At the time many states and retailers wondered why a purchase conducted via an e-commerce platform should receive different tax treatment than if the same sale were conducted in person. Congress decided then that the same tax laws that apply to a sale conducted at traditional retail should apply to e-commerce as well. Opponents claimed this solution would undermine e-commerce and raise consumer prices—neither of which was true. Congress should apply the same wisdom here and ensure that de minimis e-commerce receives the same tax treatment as all other commerce.

The main and biggest beneficiary of the meteoric rise in de minimis has not been U.S. consumers, but rather the People's Republic of China at the expense of domestic industries and our workforce. China has exploited de minimis to create massive demand for Chinese products, bypassing U.S. remedies meant to penalize China for predatory practices and diversity supply chains, like Sec. 301 penalties. As a result, those consumers who might save a few pennies on fast fashion from Shein will also find that manufacturing jobs across America have been permanently offshored to China, retail storefronts have become ghost towns, and communities are left to cope with the effects of the deadly flood of fentanyl arriving via de minimis.

Conclusion

For far too long, we have permitted China to set the global agenda, undermining U.S. values and ideals and harming our workers and trading partners in the Western Hemisphere. What was once an obscure administrative tool afforded by Congress to CBP to improve efficiency for travelers has become a

⁵ https://www.usitc.gov/publications/332/pub5405.pdf

superhighway for illegal products as a result of ineffective rulemaking and a lack of adequate congressional oversight.

In closing,

If you care about U.S. manufacturing, American workers, and working men and women in our free trade regions, close de minimis.

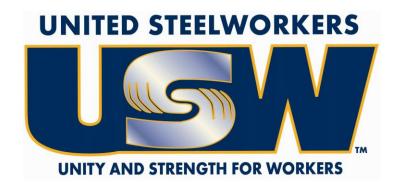
If you care about fair trade and high labor and environmental standards, close de minimis.

If you care about tens of thousands of U.S. fentanyl deaths and the impact this epidemic is having on our communities, close de minimis.

If you think that the U.S. government has a duty to protect public health and safety by preventing deadly products from being sent to our doorsteps directly from the People's Republic of China, close de minimis.

I know that the members of this committee care passionately about these issues. This is a critical time for action; we are at a tipping point. The massive recent success of Shein and Temu is not only decimating U.S. and regional manufacturing, but every major company in this country will soon be forced to make its own decision about how best to compete in the wild west of e-commerce de minimis. It is extremely likely that, unless Congress takes decisive action, Shein's model will be replicated thousands of times over and the effects will be catastrophic. Given the situation we are facing, we are also asking the administration to explore using its current authorities to close this dangerous loophole. We strongly urge Congress to immediately act.

I thank you for the opportunity to testify today and for the committee's attention to these critical issues. I look forward to answering your questions and working with you in the weeks and months ahead to close the de minimis loophole once and for all.



Testimony

of

Roy Houseman

Legislative Director
The United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial and Service
Workers International Union (USW)

for the

House Committee on Ways and Means Minority

roundtable on

Import Loophole

De Minimis Value Threshold

December 13, 2023

Let me begin by thanking Ranking Member Blumenauer and Members of the Committee on Ways and Means for the opportunity to speak with you today. Today's topic, the *de minimis* loophole, has significant implications for members of the United Steelworkers (USW) and for workers across the globe.

For our union, we strongly believe that Congress should start with a view of *de minimis* with a simple eye towards reciprocity. The United States has one of the highest *de minimis* thresholds on the globe. Set at \$800, this allows for significant volumes of direct-to-consumer imports to enter the U.S. market from international locations duty free. However, many countries impose duties on imports at much lower thresholds. For example, the People's Republic of China's *de minimis* threshold for goods from the United States is \$10.1

Our nation's trade laws let billions of goods in from China into the U.S. market duty free because of *de minimis*, but American workers and businesses face significant market hurdles to nearly 900 million consumers in China.² For American workers and businesses, there is a basic issue of fairness at play here. Our elected leaders should at least require equal treatment for American workers and businesses from the second largest economy in the world.

USW has previously highlighted the dangerous manufacturing implications of an \$800 *de minimis* threshold for direct shipments. In May of this year, USW Local 135L President Tom O'Shei testified before the Committee on Ways and Means on how direct-to-consumer tires sales easily fall below the \$800 *de minimis* threshold.³ For a union that has spent millions fighting dumped and subsidized tires from producers in China, the ability to avoid all those duties through direct shipment is a legitimate concern.

Another unintended consequence at the lack of reciprocity in the *de minimis* threshold is a lost opportunity for the American paper worker. USW represents around 80,000 paper workers, who produce a wide variety of pulp and paper products including paper-based packaging items. During the COVID-19 pandemic, when international supply chains were disrupted and e-commerce was booming, the paper industry adjusted and starting producing more paper-based packing items.⁴ However, in the past years following, our union has seen multiple paper mill closures in the packaging sub-sector specific to trade.⁵ When countries, such as China, are importing billions of goods direct-to-consumer and duty free because of the *de minimis* loophole, the American paper worker loses out on an opportunity to supply the materials needed to ship those goods.

¹International Trade Administration, "De Minimis Value", Accessed December 10, 2023.

² The Wall Street Journal, "How a Trade Loophole May Be Letting in Chinese Imports Made with Forced Labor", May 26, 2023.

³ <u>United Steelworkers</u>, "Local Union President Testifies on Behalf of Workers at Congressional Hearing on Trade", May 9, 2023.

⁴ Recycling Today, "Recovered Paper Industry Still Facing Pandemic Market Fallout", October 25, 2023. ⁵ Ibid.

Additionally, the *de minimis* loophole reduces the ability for the United States to enforce laws that address imports made with forced labor. By shipping individual packages direct-to-consumer under the *de minimis* threshold, companies dodge inspections by U.S. Customs and Border Protection (CBP). CBP is tasked with enforcing laws like the Uyghur Forced Labor Prevention Act, which bans imports of goods made in the Xinjiang region of China, where forced labor is prevalent. Protecting the rights of workers globally necessitates swift and decisive action against forced labor, coupled with the closure of exploitative loopholes, specifically the *de minimis* rule.

Finally, I wish to emphasize that the importance of broader trade updates and reforms. Addressing *de minimis* should also come with reforms – like improve our trade enforcement laws, renew Trade Adjustment Assistance, and modernize our trade preference programs like Generalized System of Preferences (GSP) and African Growth and Opportunity Act (AGOA) – to ensure American workers have a better chance to compete in the global marketplace as opposed to just benefiting foreign importers.

In conclusion, the American worker, union or non-union, wants a level playing field in trade and an ability to thrive. That is why reform of *de minimis* threshold is necessary. Thank you for this opportunity.

⁶ <u>U.S.-China Economic and Security Review Commission</u>, "Shein, Temu, and Chinese e-Commerce: Data Risks, Sourcing Violations, and Trade Loopholes", April 14, 2023.

Summary of USW Trade-Related Items in the First Session of the 118th Congress

USW has provided several testimonies and materials to the 118th Congress. Below are links and short summaries to those materials for Members and their staff to consider.

- February 2023: <u>USW Local 9423 President Andy Meserve testified before the Senate Finance Committee regarding his aluminum smelter closure.</u> Mr. Meserve highlighted that China accounts for around 58 percent of global primary aluminum capacity. Mr. Meserve highlighted that improving trade enforcement and updating customs laws could improve outcomes for American workers.
- April 2023: <u>USW testified before the Ways and Means Subcommittee on Trade on Countering China's Trade and Investment Agenda: Opportunities for American Leadership.</u> The testimony focused on several of issues under three broad categories, including modernizing trade agreement rules, updating our trade tools to better account for China's outward expansion, and ensuring workers across the globe have democratic rights to freedom of association and independent labor unions.
- May 2023: <u>USW Local 135L President Tom O'Shei testified at the Committee on Ways and Means field hearing entitled Trade in America: Securing Supply Chains and Protecting the American Worker Staten Island.</u> Mr. O'Shei highlighted the positive and negative trade impacts in the tire industry. Mr. O'Shei also highlighted the need to address unilateral tariff reductions in the GSP program for tires. Since the hearing, Representatives Brian Higgins (NY-26) and Westerman (AR-04) introduced H.R. 5593, the Protecting American Tire Worker Act, which adds tires to the GSP import sensitive list.
- September 2023: <u>USW testified before the Ways and Means Subcommittee</u>
 on Trade entitled <u>Reforming the Generalized System of Preferences to Safeguard U.S. Supply Chains and Combat China.</u> USW highlighted the significant need to reform the GSP program and ensure assistance to workers negatively impacted by trade.



Remarks by USCIRF Commissioner Nury Turkel House Committee on Ways and Means Roundtable Wednesday, December 13, 2023

Good afternoon, Ranking Member Earl Blumenauer and honorable members of the committee. Thank you for inviting me to participate in this roundtable as a commissioner at the U.S. Commission on International Religious Freedom (USCIRF).

First, I would like to thank the U.S. Congress for passing the Uyghur Forced Labor Prevention Act, or UFLPA, which received overwhelming bipartisan support and was signed into law by President Biden in 2021. This important legislation creates a "rebuttable presumption" to ensure that all goods made with Uyghur forced labor in Xinjiang will be banned from entering the U.S. market. I am also grateful to law enforcement officers at the Customs and Border Protection (CBP) for vigorously implementing this law.

However, I believe this law can be and should be strengthened so that Chinese businesses do not take advantage of existing loopholes and continue importing United States goods and products made with Uyghur forced labor. One such loophole is the "de minimis" exemption.

De minimis entries pose a serious threat to the enforcement of U.S. trade rules

CBP officials' remarks at the Trade Facilitation and Cargo Security Summit on April 16 revealed serious problems with CBP's capacity to police "*de minimis*" entries valued at \$800 or less. CBP data show that in 2022, less than half of de minimis shipments included digital data, whether through "Type 86 entry" or the "Section 321 data pilot program."

Sal Ingrassia, former port director at the JFK Airport, which sees about one-third of the de minimis entries to the U.S., said that while the agency is glad brokers are providing Harmonized Tariff Schedule codes in the Type 86 test, "we still have a lot of concerns," because CBP is finding the data is often not correct. According to an article in International Trade Today, CBP found "some type of violation" in 25% of shipments examined:

Ingrassia said ports identified *de minimis* shipments to examine and reported to the *de minimis* working group what they learned. "One-quarter of what we looked at had some type of violation," he said. "It was alarming to see we had so many violations." He said a large number of the violations were either an HTS misclassification "or unmanifested merchandise in the shipment, meaning that we had an e-commerce package or shipment with three items in it. Only one item was declared. That's a real problem for us when

¹ Mara Lee, <u>Type 86 Test Revealing Compliance Weaknesses in Small Packages</u> (internationaltradetoday.com), April 17, 2023

we're talking about entry Type 86."... Ingrassia asked rhetorically: "How can we run a system like entry Type 86 without having correct information?"

A second shocking revelation was that in 25% of cases, CBP was simply unable to locate packages identified for inspection. These are the cases where CBP had asked companies to hold packages for inspection and then discovered that packages had already been released before CBP could inspect them.

A third disturbing issue was the statement by Brandon Lord, executive director of CBP's Trade Policy and Programs Directorate, that CBP will require fewer data in the future, not more, saying that CBP will "mandate way less" than the combined data elements used in the Type 86 test and the Section 321 data pilot, according to International Trade Today.

The fourth question that should be examined by Congress is how CBP handles transshipment coming from a third country and not the country of origin – such as Canadian warehouses. The importing business community apparently favors the creation of a new arrangement, such as "Free Trade Zones" in third countries, to warehouse goods that could later be sold to consumers under the *de minimis* threshold. I urge the Ways and Means Committee to ensure that any successful arrangements do not compound the problems of serious gaps in CBP enforcement of forced-labor and other trade laws in relation to *de minimus* shipments.

The Los Angeles Field Office reportedly handles about a third of the national volume of *de minimis* packages. At the April Summit, the director of this office discussed a test operation that flagged "quite a few shipments" as non-compliant and pointed to the need for "advanced data" to flag shipments for enforcement, including health and safety risks, infringements on intellectual property or matters of interest to other Partner Government Agencies, including narcotics and other contraband, and of course forced-labor goods.

Direct-to-consumer shipments and the Shein IPO

Finally, I urge this Committee to consider the implications of breakneck market growth of direct-to-consumer shipping of cheap goods from China by Shein, Temu, and similar companies. According to the US-China Security and Economic Review Commission, Shein has a "dominant" place in the "fast fashion sector, surging past Tiktok, Instagram, and Twitter to briefly become the most downloaded app" in the United States in May 2022. This model depends on tariff-free access to American markets and, I argue, nearly a free pass on *de minimis* shipments to avoid compliance with other US trade laws. The April 2023 US-China Security and Economic Review Commission report² cites heightened risks of "exploitation of trade loopholes; concerns about production processes, sourcing relationships, product safety, and use of forced labor; and violations of intellectual property rights." The brief raises the alarm about the race by other Chinese e-commerce platforms to copy this model, highlighting the "risks and challenges to U.S. regulations, laws, and principles of market access."

² Nicholas Kaufman, "Shein, Temu, and Chinese e-Commerce: Data Risks, Sourcing Violations, and Trade Loopholes," U.S.-China Economic and Security Review Commission, April 14, 2023, at https://www.uscc.gov/sites/default/files/2023-04/Issue Brief-Shein Temu and Chinese E-Commerce.pdf

We commend the bipartisan letter³ by twenty-four House Representatives urging the U.S. Securities Exchange Commission to mandate independent auditing of workpapers associated with the Shein IPO, to verify that it does not use Uyghur forced labor, as part of the registration conditions to issue securities. This is important because it emphasizes that protecting supply chains and the American worker not only addresses forced labor and noncompliant or deceptive practices but also addresses trade and access to U.S. capital markets.

Legislation

We also endorse Representative Earl Blumenauer's *de minimus* bill⁴ that excludes imported articles from nonmarket economy countries or countries on the priority watch list from receiving *de minimis* treatment. *De minimis* treatment allows imported articles valued under \$800 to enter the United States without paying duties. The bill also directs CBP to collect additional information on merchandise that may qualify for de minimis treatment.

In sum, I urge the Ways & Means Committee to consider the dangers involved in the approximately 2 million *de minimis* packages per day brought into the United States. Of these, in 2022, according to the presentations at the April Trade Facilitation and Cargo Security Summit:

- One-half were shipped with zero digital data provided to US customs authorities.
- One-quarter of those flagged for inspection were never inspected because the importer failed to comply with the order to hold the items for inspection, and
- one-quarter of those inspected at JFK airport had "some type of violation."

It is hard to believe that Congress intended for the "de minimis" provision, which has the singular intent of waiving tariffs on small shipments, to result in spotty or non-existent policing of Congress's black-letter prohibitions on the importation of fake, dangerous, and forced-labor goods.

It is past time for Congress to re-examine the assumption behind raising the threshold from \$200 to \$800 in the Trade Facilitation and Trade Enforcement Act of 2015. The loophole for egregious corporate and consumer complicity in China's genocidal forced labor and other evasions of US trade law (apart from tariffs) is simply too great.

On behalf of USCIRF, I urge Congress and the Biden administration to put guardrails around the "de minimis" loophole and specifically impose more scrutiny on such shipments from China. U.S. policies on this issue will demonstrate to like-minded partners our unwavering resolve and commitment to human rights and religious freedom. In turn, it will encourage them to adopt similar policies to more effectively address Uyghur forced labor, religious freedom violations, and human rights abuses in the Uyghur region.

Thank you again, and I look forward to our discussions.

³ Arriana McLymore, "US lawmakers push SEC to order audit of Shein IPO over Uyghur forced labor fears," Reuters, May 1, 2023, at https://www.reuters.com/business/sustainable-business/us-lawmakers-push-sec-order-audit-shein-ipo-over-uyghur-forced-labor-fears-2023-05-01/

⁴ Import Security and Fairness Act of 2022, H.R.6412 - 117th Congress



NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

Representing America's Finest

U. S. HOUSE OF REPRESENTATIVES COMMITTEE ON WAYS AND MEANS Subcommittee on Trade

Statement of Andrea Edmiston on behalf of the National Association of Police Organizations 317 S. Patrick Street, Alexandria, Virginia 22314

Democratic Roundtable on Section 321 of the Tariff Act of 1930, "De Minimis"

December 13, 2023

Ranking Member Blumenauer and distinguished members of the Subcommittee, my name is Andrea Edmiston, and I am submitting this statement today on behalf of the National Association of Police Organizations (NAPO), representing over 241,000 sworn law enforcement officers throughout the United States. NAPO is a coalition of over 1,000 police unions and associations from across the nation, which was organized for the purpose of advancing the interests of America's law enforcement officers through legislative advocacy, political action, and education.

I speak today on the devasting impact the spread of fentanyl is having on our communities and the role Section 321 of the Tariff Act of 1930, commonly referred to as "de minimis", plays in facilitating the importation of millions of pounds of fentanyl and other illicit drugs to the U.S. market.

The de minimis loophole in U.S. trade law allows individual packages shipped directly to American consumers with virtually no inspection or documentation and free of duty if the contents are valued beneath the de minimis threshold of \$800. U.S. Customs and Border Protection (CBP) is on track to receive over 1 billion de minimis shipments in fiscal year 2023. Unlike Formal and Informal Entry, De Minimis shipments are released into the country without having to file an Entry Summary (CBP Form 7501), which is the key document for CBP to administer the over 500 laws it is responsible for enforcing.

With the rise of e-commerce and mass distribution shippers, the de minimis provision has exploded in popularity creating a supercharged black-market for counterfeit products, goods produced with slave labor, hazardous materials, and illicit drugs, including fentanyl. Fentanyl is a highly addictive synthetic opioid that is fifty times more potent than heroin and one hundred times more potent than morphine. Two milligrams of fentanyl, just enough to fit on the tip of a pencil, is considered a potentially lethal dose.

Over 150 people die every day from overdoses related to synthetic opioids like fentanyl according to the Centers for Disease Control and Prevention (CDC). Since 1999, drug overdoses have killed approximately 1 million Americans. Fentanyl is being mixed with already deadly illicit drugs, hidden in counterfeit drugs, and being peddled at alarmingly high rates.

We are battling the trafficking of illegal narcotics on multiple fronts, from our southern border to Asian supply chains selling via e-commerce and shipping drugs like fentanyl in small packages by air cargo and the international mail system. The de minimis loophole is severely exacerbating the opioid crisis and

contributing to deaths in our country by allowing fentanyl and other illegal opioids to enter our market duty free and largely uninspected.

Fentanyl traffickers seek to mimic normal e-commerce shipments to avoid detection by CBP. Fentanyl traffickers often declare their international shipments as relatively low-value consumer goods and send them to mail centers or other addresses not associated with the criminal organization.ⁱⁱ

Henry Konah Koffie of Pennsylvania was found guilty on two counts of distribution of a controlled substance resulting in death, one count of distribution of a controlled substance resulting in serious bodily injury, and five counts of distribution of a controlled substance. Koffie was a prolific fentanyl vendor operating under the moniker "NARCOBOSS" on the Darknet. He had packages of fentanyl originating from Hong Kong and China shipped to him and addresses belonging to his family members using international mail and express consignment carriers, coming through the de minimis loophole. iii

This is just one example of a dealer who has been caught, but due to the de minimis loophole, many more dealers and manufacturers of fentanyl get away with it. We do not have the data on the actual number of packages coming across the border through de minimis that are trafficking fentanyl other than what is seized by law enforcement.

The de minimis provision is an outdated provision that has become a dangerous gateway that allows millions of direct mail shipments of illicit narcotics from anywhere in the world to enter the U.S. market virtually uninspected, destroying families and entire communities and overwhelming law enforcement agencies, like those that we represent.

We ask the Subcommittee to consider these key facts:

- In Fiscal Year 2023, the U.S. received more than 1 billion individual packages claiming de minimis
 preferences, an increase of nearly 700 percent from the 150 million packages that entered via de
 minimis in 2016.
- CBP's fentanyl seizures have risen more than 800 percent since fiscal year 2019, many of them
 made in the de minis environment, and as of September 2023, CBP has seized over 26,000 pounds
 of fentanyl.^{iv}
- In 2022, the Drug Enforcement Administration (DEA) seized more than 59.6 million fentanyllaced fake pills and more than 13,000 pounds of fentanyl powder. The 2022 seizures are equivalent to more than 395 million lethal doses of fentanyl. The 2023 fentanyl seizures represent over 332.6 million deadly doses.
- In written testimony for a Senate Committee on Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations hearing titled "Combatting the Opioid Crisis: Exploiting Vulnerabilities in International Mail Security" in January 2018, the Deputy Assistant Director of the ICE Homeland Security Investigations Office of Illicit Trade, Travel, and Finance Greg Nevano stated, "[t]he majority of illicit fentanyl in the international mail and the express consignment carrier (ECC) environments is shipped in concentrations of over 90 percent, whereas the majority of fentanyl in the land border environment is seized in concentrations of less than 10 percent."

As the facts above show, fentanyl trafficking and seizures are on the rise, fueled by a tsunami of e-commerce purchases, which have resulted in nearly 3 million shipments a day entering the U.S. market through the de minimis provision in U.S. trade law.

NAPO has long fought for resources to support law enforcement's efforts to combat fentanyl, its analogues, and similar opioids. Eliminating de minimis e-commerce shipments will help staunch the surge of illicit narcotics that are exploiting this loophole to wreak havoc across the country, and ease the burden on our law enforcement resources, which are stretched thin among a multitude of priority areas. We cannot take action only after this deadly drug enters our country; we must fight it before it is shipped into our markets from China and other countries.

If we can stop even a fraction of the amount of fentanyl and its analogues pouring over our borders by closing the de minimis loophole for e-commerce packages, we would save thousands of lives. NAPO is joined by a growing coalition of law enforcement organizations, including the National Sheriffs Association, who are equally concerned about the de minimis loophole and its impact on fentanyl trafficking and calling for immediate action by the Administration and Congress.

The Administration has the authorities to close the loophole and we are urging them to do so immediately. We are also urging Congress to close this loophole in statute and remove all e-commerce shipments from de minimis treatment to help protect the health and safety of the American people.

On behalf of NAPO, we appreciate your attention to this important issue, and we are prepared to work with you to ensure much-needed reforms are made to resolve this massive and growing problem that is literally endangering and killing our citizens.

 $\frac{https://www.cdc.gov/stopoverdose/fentanyl/index.html\#:\sim:text=Fentanyl\%20is\%20a\%20synthetic\%20opioid,nonfatal\%20overdose\%20in\%20the\%20U.S.$

ⁱ CDC, Fentanyl Facts:

ii (State Department, p.4)

iii See U.S. Immigration and Customs Enforcement, Homeland Securing Investigations Press Release: <u>Alleged Philadelphia</u> fentanyl distributor arraigned on federal drug trafficking charges, July 12, 2017.

iv See: Drug Seizure Statistics | U.S. Customs and Border Protection (cbp.gov)

v https://www.dea.gov/

vi (Homeland Security DHS)



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Written Testimony of Michael Stumo, CEO of the Coalition for a Prosperous America

Before the House Ways & Means Subcommittee on Trade "Roundtable on De Minimis Loophole"

3:00pm Wednesday, December 13, 2023 CVC-268 Capitol Visitor Center

Dear Members of the Subcommittee:

Earlier this year, at this Committee's hearing in May on Modernizing Customs Policies to Protect American Workers and Secure Supply Chains, I and others testified about the tremendous damage and chaos resulting from the de minimis loophole. Again in October, I and others testified about the problems of de minimis before the U.S. House Homeland Security Subcommittee on Oversight, Investigations, and Accountability.

Awareness about the problems of de minimis has grown substantially. National law enforcement groups and fentanyl victims groups are advocating for repeal of the de minimis loophole.

But truly, it should be enough for Congress that in June 2023, U.S. Customs and Border Protection (CBP) itself asserted for de minimis that:

- "The overwhelming volume of small packages and lack of actionable data limit CBP's ability to identify and interdict high-risk shipments that may contain narcotics, merchandise that poses a risk to public safety, counterfeits, or other contraband." and
- "In FY 2022, CBP cleared over **685 million de minimis shipments with insufficient** data to properly determine risk.³"

The problems of de minimis are extraordinarily well documented. Leading journalists have studied and reported their analysis for the *Wall Street Journal*, *Reuters*, and others. SHEIN and Temu, entirely by way of the de minimis loophole, have become the top U.S. ecommerce apps in the period <u>since</u> Congress condemned Uyghur genocide and the ban on products containing cotton from Xinjiang.

Simply put, the credibility of Congress is on the line.

¹ My written testimony for that hearing is available here: https://prosperousamerica.org/written-testimony-before-the-house-ways-means-subcommittee-on-trade-modernizing-customs-policies-to-protect-american-workers-and-secure-supply-chains/

² See here for my written testimony: https://prosperousamerica.org/written-testimony-before-the-house-homeland-security-subcommittee-on-oversight-investigations-and-accountability-exploitation-and-enforcement-evaluating-the-department-of-homeland-security/

³ CBP Commercial Customs Operations Advisory Committee, Government Issue Paper, E-Commerce Task Force. June 2023. Available at https://www.cbp.gov/sites/default/files/assets/documents/2023-Jun/NGFE-C~1.PDF

Despite the overwhelming evidence of de minims anarchy, the National Foreign Trade Council (NFTC), at the behest of express shippers (the sole domestic party benefiting from de minimis, at everyone else's expense) is engaged in a false and misleading advocacy campaign to sew fear, uncertainty and doubt among legislators. And regrettably, they have had assistance from certain individuals employed by CBP's Office of Trade.

While the NFTC makes unsourced false assertions on its website and in its email campaigns, my organization has published line by line, cited refutations of their falsehoods.⁴ And similarly, when CBP's Office of Trade quietly published a document with false statistics, we publicly called them out, and we are thankful to the U.S. International Trade Commission for their acknowledgement of these false statistics.⁵

I encourage you to look at our expose on their false advocacy. For the remainder of this written testimony, I will address what repeal means in practice, why inflation need not be a concern, and why "more data" is useless.

So what does repeal of the de minimis loophole look like?

Technically, repeal of the de minimis loophole means CBP will no longer 'manifest release' merchandise ordered from abroad without a proper entry. In lay speak, that means merchandise will have a tariff number and duty assessed (if any) based on declarations made by someone resident in America. Entirely separate from de minims, we still have "informal entry" for shipments below \$2,500, meaning no customs broker is required. So consumers will still be able to order things directly from overseas vendors without a broker so long as the purchase is below \$2,500.

Prior to the de minimis loophole, CBP published pamphlets available at USPS locations that explained the simple process of ordering a product from an overseas vendor shipped via the mail.⁶ The pamphlet explained that if a product was not subject to duty, it would be "endorsed on the outer wrapper with the notation Passed Free – U.S. Customs" and "returned immediately to the Postal Service for delivery by the local post office to the addressee without additional postage, handling, or other fees."⁷

If the product in the mail was subject to duty, then the pamphlet explained:

"the examining Customs officer will attach a mail entry, Customs form CF 3419, to the outer wrapper showing tariff item number, rate of duty, and amount of duty to be paid on the shipment. The parcel is then returned to the Postal Service for delivery and collection of duty plus a postal handling fee."

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⁴ See "Falsehoods & Facts: The Truth About De Minimis", available at https://prosperousamerica.org/falsehoods-facts-the-truth-about-de-minimis/

⁵ See: https://prosperousamerica.org/cpa-urges-customs-to-publicly-correct-false-statistics-on-de-minimis-shipments/

⁶ See here: https://www.google.com/books/edition/ /SXgZZQCHuSwC?gbpv=1

⁷ *Id.*, page 1.

⁸ *Id*.

The handling fee was \$5.00 in the early 1990s, which would be \$10 today. This is entirely appropriate given the extra burden for CBP to examine small packages. Our present policy of simply not doing an entry or assessing any duty is anarchy, lawlessness, and completely unacceptable.

Will consumers perpetually be paying duties and handling fees to USPS? And what about inflation concerns?

No, not at all. It is estimated that Amazon, Walmart, Apple, Target, the Home Depot, Costco and BestBuy alone constitute over half of all ecommerce sales in the U.S., and the vast majority of these sales are not entering via the de minimis loophole. Merchandise sold on these platforms is mostly imported via traditional means, properly inspected, and will be unaffected by de minimis repeal.

Furthermore, most consumer items, including laptops and cell phones from China (!), are not subject to any duty under proper, traditional importation procedures. The majority of consumer items will be thus be unaffected.

The one area where consumers may notice is in apparel. It is estimated that Shein and Temu's sales alone constitute at least a third of all de minimis imports. Amazon's use of de minimis is likely concentrated in apparel as well.

Of all consumer items, apparel is the only segment where the United States maintains non-insignificant duties – averaging 14% – for imports from non-FTA countries. And many apparel items from China are subject to additional Section 301 duties of 25%, assuming they are even eligible for importation.

If a rise in Made-in-China apparel prices is at the root of opposition to de minimis repeal, then Congress should be honest about that, and do away with duties on Chinese apparel while simultaneously repealing de minims. This would be vastly preferable, as under normal importation procedures, there is a chance for enforcement of the Uyghur Forced Labor Enforcement Act.¹⁰

Without de minimis, the unbelievable cheap apparel items available online would likely largely disappear. But this is the cost of having a society and passing laws based on morals. And apparel spending should be put into context. According to the U.S. Bureau of Labor Statistics (BLS),

¹⁰ In September, CBP's Office of Trade (CBP OT) published an e-commerce FAQ. This FAQ included the question "Are goods made with forced labor entering the U.S. as de minimis shipments?" CBP OT's answer is "CBP enforces the provisions of the UFLPA regardless of the value of the goods. Goods entered pursuant to Section 321 are thus not exempt from CBP's enforcement procedures." This is simply not true, and is a misdirection rising to the level of a lie. With only a shipping manifest, it is actually impossible – even theoretically – to enforce against the UFLPA Entity List. Congress must be on guard with assertions made by CBP OT.

⁹ See "Key Finding No. 1", Select Committee Releases Interim Findings from Shein & Temu Forced Labor Investigation, https://selectcommitteeontheccp.house.gov/media/press-releases/select-committee-releases-interim-findings-shein-temu-forced-labor

average annual consumer expenditures in 2022 were \$72,967, and apparel and services (services include dry cleaning) accounted for \$1,945 of this amount, or 2.67%.¹¹

Repealing de minimis would likely affect at most less than one percent of consumer spending. Brick and mortar retailers in the United States have not adjusted their pricing lower to compete with SHEIN and Temu – they simply cannot. Beth Henke, General Counsel at American Eagle Outfitters Inc., explained that de minimis "is an issue of fundamental fairness and a level playing field." Ms. Henke stresses that responsible American apparel retailers, who all pay both U.S. corporate income tax and all applicable duties on their imports, also work to ensure supply chains free of forced labor.

So to reiterate: once de minimis is repealed, pricing of apparel on e-commerce websites would likely more closely approximate that of the apparel offered by our leading national apparel brands.

Finally, aside from apparel, it is true that a consumer ordering something from an overseas vendor via the mail will now have to pay any applicable duty and likely a \$10 handling fee. Again, this is appropriate, and simply brings the United States in line with other countries. Amazon and other retailers in Canada, for example, clearly state on product listing pages whether the good will ship from inside Canada or from without, and warns that if shipped from outside Canada, will be subject to duties and handling fee.

Why 'More Data' Is Useless

In 2018, Congress hoped to get a handle on the fentanyl crisis by passing the STOP Act, which required foreign postal authorities to provide Advance Electronic Data ("AED"). China Post now provides AED on over 99% of postal shipments, but the data is garbage. This is unsurprising, as neither the overseas vendor or its postal authority have any incentive to properly catalog their merchandise. As CBP's Exectuvie Director for Trade bluntly stated earlier this year at CBP's Trade Facilitation and Cargo Security Summit, "it's so easy to sell directly to U.S. consumers from overseas and mail the merchandise to them. And there's zero incentive as that foreign shipper, or foreign seller, to learn the requirements to enter the United States."¹³

Almost half of de minimis shipments are offering expanded data via CBP's voluntary 'Type 86' de minimis pilot, but this too has been a spectacular failure. The Consumer Products Safety Commission ("CPSC") warned back in 2019 that it "anticipates that it will benefit little from the [Type 86] test and will continue to experience the data and targeting challenges" CPSC warned clearly in its Executive Summary that "Because the government does not require a traditional Entry filing for *de minimis* e-Commerce, the risk associated with these shipments is

¹¹ U.S. Bureau of Labor Statistics, Consumer Expenditures (Annual) News Release, Sept. 8, 2023, *available at* https://www.bls.gov/news.release/archives/cesan 09082023.htm

¹² https://prosperousamerica.org/leading-customs-authorities-make-the-case-against-de-minimis-commerce/
13 https://internationaltradetoday.com/article/2023/04/17/type-86-test-revealing-compliance-weaknesses-in-small-nackages-2304170052

packages-2304170052

14 See page 12, United States Consumer Product Safety Commission (CPSC), "CPSC e-Commerce Assessment Report", Nov. 2019, available at https://www.cpsc.gov/s3fs-public/CPSC-e-Commerce-Assessment-Report.pdf

largely unknown. Consequently, CPSC and other U.S. government agencies are challenged when attempting to risk-assess and interdict this significant segment of incoming shipments." Congress should also ask itself: if somehow overseas, judgment proof vendors were convinced to provide accurate data for CBP and other agencies, then why not collect the duty? Once the tariff number and merchandise country of origin is provided, as it is in Type 86, then assessing and collecting the duty can be automated. If Congress intention is really to provide a privileged duty-free channel for e-commerce, but not brick and mortar retailers who invest in our communities, then Congress should be honest and say so.

In conclusion, the time is now to repeal de minimis. It is doing incalculable damage to our society, and repealing de minimis will only serve to restore order. Thank you.

¹⁵ *Id*. at 2.